

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

In re:)
PHARMACEUTICAL INDUSTRY) CA No. 01-12257-PBS
AVERAGE WHOLESALE PRICE) MDL No. 1456
LITIGATION)

MOTION HEARING

BEFORE THE HONORABLE PATTI B. SARIS
UNITED STATES DISTRICT JUDGE

United States District Court
1 Courthouse Way, Courtroom 19
Boston, Massachusetts
May 22, 2006, 3:05 p.m.

LEE A. MARZILLI
CERTIFIED REALTIME REPORTER
United States District Court
1 Courthouse Way, Room 3205
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1 A P P E A R A N C E S:

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P R O C E E D I N G S

THE CLERK: In re: Pharmaceutical Industry Average Wholesale Price Litigation, Civil Action No. 01-12257, will now be heard before this Court. Will counsel please identify themselves for the record.

MR. PAUL: Nicholas Paul, Deputy Attorney General for the state of California.

MS. THOMAS: Susan Thomas, private counsel for the relator Ven-A-Care.

MR. BREEN: James Breen, counsel for the relator Ven-A-Care.

MR. MILLER: Adam Miller for the relator Ven-A-Care.

MR. TEMMERMAN: Thomas Temmerman, Senior Assistant Attorney General, California.

MR. SHAPIRO: Jonathan Shapiro for Ven-A-Care.

MR. DALY: Good morning, your Honor. Jim Daly on behalf of Abbott.

MS. FUMERTON: Tara Fumerton on behalf of Abbott.

MR. McDONALD: John McDonald on behalf of B. Braun of America.

THE COURT: All right, so you're essentially the moving parties.

MR. DALY: Yes, your Honor.

MR. PAUL: Excuse me, your Honor. There's one

1 is also a false claim, and it is entirely consistent with our
2 first theory.

3 I would respectfully submit, your Honor, that we
4 have pled this -- as far as the particularity of the conduct,
5 we've attached hundreds of pages. I don't know that your
6 Honor has received a pleading in this case yet with as much
7 detail about the false price representations that the
8 manufacturers made, and the actual backup evidence of why
9 it's false, and how the state knows it's false for each NDC
10 number, for each period of time, for each company.

11 THE COURT: Well, I think what they're saying is
12 that you should give me at least one claim. So you're the
13 state. Give me one false claim for each category. Is that
14 what you're saying?

15 MR. BREEN: Your Honor, if we were to attach -- I
16 understand what they're saying.

17 THE COURT: I haven't actually gone that route
18 but --

19 MR. BREEN: But if we're going to do that, I mean,
20 if one claim or all the claims, all the claims we tried to
21 figure it out, it would be five stories high at a minimum.

22 THE COURT: That's right, so I'm not going to
23 require it. But let me just ask you this: Would you have an
24 example of at least one for each kind of pricing fraud?

25 MR. PAUL: Your Honor, we can certainly provide

1 that if the Court determines that that would help the system.

2 THE COURT: I wouldn't want them all, and I
3 wouldn't demand them all. The question is, I will ask them
4 that question, so -- because unlike some of the other cases I
5 have where they're the consumer class actions and they're the
6 sick old people, you're actually the state of California, so
7 I'm assuming you can come up with one example of each drug
8 that was allegedly fraudulently billed. Is that right?

9 MR. PAUL: I appreciate your confidence, your
10 Honor. We can.

11 THE COURT: Okay, is there anything else? We can
12 do quick rebuttals, and then we can move on.

13 MR. BREEN: Your Honor, unless you have any other
14 questions on ambiguity, we've briefed that thoroughly.

15 THE COURT: Ambiguity in the term?

16 MR. BREEN: Well, they're arguing that this was
17 ambiguous or it was uncertain, or therefore they couldn't
18 have made a false representation. And the case law was clear
19 on this, your Honor. We put it in our brief. If the
20 defendant is going to take the position that it was somehow
21 misled or didn't know what was going on or things were too
22 ambiguous, therefore it couldn't have made a false statement,
23 that's a question of fact for the trier of fact. The
24 defendants --

25 THE COURT: Well, all right, I understand what you

C E R T I F I C A T E

UNITED STATES DISTRICT COURT)
DISTRICT OF MASSACHUSETTS) ss.
CITY OF BOSTON)

I, Lee A. Marzilli, Official Federal Court
Reporter, do hereby certify that the foregoing transcript,
Pages 1 through 56 inclusive, was recorded by me
stenographically at the time and place aforesaid in Civil
Action No. 01-12257-PBS, MDL No. 1456, In re: Pharmaceutical
Industry Average Wholesale Price Litigation, and thereafter
by me reduced to typewriting and is a true and accurate
record of the proceedings.

In witness whereof I have hereunto set my hand this
15th day of June, 2006.

LEE A. MARZILLI, CRR
OFFICIAL FEDERAL COURT REPORTER